

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**VENESHIA E. COOK**  
Claimant

VS.

**THE SAVAGE GROUP, LLC, d/b/a  
McDONALD'S**  
Respondent

AND

**KANSAS RESTAURANT & HOSPITALITY  
ASSOC. SELF-INSURED FUND**  
Insurance Carrier

Docket No. 1,040,714

**ORDER**

**STATEMENT OF THE CASE**

Claimant requested review of the February 3, 2009, Award entered by Administrative Law Judge Kenneth J. Hursh. The Board heard oral argument on May 20, 2009. John G. O'Connor, of Kansas City, Kansas, appeared for claimant. Wade A. Dorothy, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

The Administrative Law Judge (ALJ) found that claimant failed to provide a timely written claim for compensation under K.S.A. 44-520a and, accordingly, denied her request for workers compensation benefits.

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

Claimant contends she satisfied the written claim requirement of K.S.A. 44-520a when she provided respondent with Physician Ability Activity Status Reports after each trip

she made to Concentra Medical Center, (Concentra) her authorized treating medical provider. She, therefore, requests that she be awarded compensation for the stipulated impairment of 6.75 percent to each leg, as well as future medical treatment.

Respondent requests that the Board find that claimant failed to serve a timely written claim for compensation and affirm the ALJ's Award.

The issue for the Board's review is: Did claimant provide respondent with timely written claim as required in K.S.A. 44-520a?

### **FINDINGS OF FACT**

It has been stipulated by the parties that claimant suffered an injury at work on October 9, 2007. Respondent has stipulated to all compensability issues, except the issue of timely written claim. It has been stipulated by the parties that claimant has a functional impairment of 6.75 percent to each of her lower extremities at the level of the leg.

Claimant testified that she reported her injury to a manager, LaTessia Luster, shortly after her accident occurred and that Ms. Luster made a written report of the accident. Claimant did not sign the report and said she did not see it and does not know if it was the state accident report form. An Employer's Report of Accident was filed with the Division of Workers Compensation on October 15, 2007.

The day after claimant's accident, October 10, respondent's general manager, Stephanie Thomas, told her to go to Concentra to be checked out. Claimant had not asked to be seen by a doctor. Claimant was seen at Concentra about four times, the last time being October 18, 2007. Each time she was seen at Concentra, she was given two copies of a Physician Activity Status Report. She kept one copy of the report and gave one copy to Ms. Thomas. Claimant testified that she turned in the slips to Ms. Thomas "[b]ecause I was supposed to so I could go back to the doctor."<sup>1</sup> She did not make any note or mark on the slips, and she did not sign them. The last such slip, dated October 18, 2007, stated under the "Patient Status" section that claimant was "[r]eleased from care."<sup>2</sup>

Claimant continued to work after her accident and did not seek treatment at Concentra after October 18, 2007. On June 11, 2008, she saw an attorney. Between the time she was hurt and the time she saw an attorney, she never gave her employer anything in writing about her workers compensation claim, other than the Physician Activity Status Report slips. Claimant's Application for Hearing was filed on June 23, 2008.

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<sup>1</sup> R.H. Trans. at 13.

<sup>2</sup> *Id.*, Cl. Ex. 1 at 5.

**PRINCIPLES OF LAW**

The Workers Compensation Act requires injured workers to provide their employers with written claims for compensation within certain time limits. Generally, workers have 200 days from the accident date, last payment of compensation, or last date that medical compensation was provided. K.S.A. 44-520a(a) provides:

No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident.

A written claim for compensation need not take on any particular form, so long as it is, in fact, a claim.<sup>3</sup> In *Ours*,<sup>4</sup> the Kansas Supreme Court wrote:

In a workmen's compensation case, the written claim for compensation prescribed by K.S.A. 1972 Supp. 44-520a need not take on any particular form so long as it is in fact a claim. In determining whether or not a written claim was in fact served on the respondent the trial court will examine the various writings and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. On the facts related in the opinion the question is, did the employee have in mind compensation for his injury when the various documents were prepared on his behalf, and did he intend by them to ask his employer to pay compensation?

Moreover, the Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it.<sup>5</sup> The same purpose or function has, of course, been ascribed to the requirement for notice found in K.S.A. 44-520.<sup>6</sup> Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation. In *Fitzwater*,<sup>7</sup> the Kansas Supreme Court described the test as follows:

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<sup>3</sup> *Lawrence v. Cobler*, 22 Kan. App. 2d 291, 294, 915 P.2d 157, rev. denied 260 Kan. 994 (1996).

<sup>4</sup> *Ours v. Lackey*, 213 Kan. 72, Syl. ¶ 2, 515 P.2d 1071 (1973).

<sup>5</sup> *Craig v. Electrolux Corporation*, 212 Kan. 75, 82, 510 P.2d 138 (1973).

<sup>6</sup> *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P.2d 1055 (1978).

<sup>7</sup> *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 166, 309 P.2d 681 (1957).

In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

### ANALYSIS

The slips entitled Physician Ability Activity Status Report that claimant delivered to her employer constituted written claim for compensation. These slips contained, inter alia, claimant's next scheduled office appointment and her work restrictions. Claimant testified that she personally handed a slip from each doctor's visit to her general manager, Stephanie Thomas, because she wanted her employer to continue providing her with authorized medical treatment under workers compensation. She wanted to be able to return to the doctor. She also wanted to inform her employer of her restrictions so that she could continue working.

The claim for compensation mandated by the statute need not take any particular form. It need only be in writing and alert the employer that a claim for workers compensation benefits is being made.<sup>8</sup> Here, by delivering the status slips to her employer, claimant was alerting her employer of her need for additional medical treatment, of her desire for same, and that it be paid as authorized medical for her work-related injury. The furnishing of medical treatment by the employer has long been held to be the furnishing of compensation.<sup>9</sup> Thus, claimant provided written claim for compensation within 200 days of the last payment of compensation. The requirements of K.S.A. 44-520a were satisfied

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<sup>8</sup> See, e.g., *Evans v. Harrah's Kansas Casino Corp.*, No. 1,024,298, 2007 WL 466013 (Kan. WCAB Jan. 24, 2007); *Hayworth v. Bagcraft Packaging, LLC*, No. 237,108, 2004 WL 764534 (Kan. WCAB Mar. 31, 2004); *Terrell v. Training & Evaluation Center for Handicapped of Hutchinson*, No. 1,006,036, 2003 WL 21688453 (Kan. WCAB June 19, 2003); *Cazares v. State of Kansas*, No. 245,972, 2000 WL 372251 (Kan. WCAB Mar. 21, 2000); *Beckner v. State of Kansas*, No. 234,591, 1999 WL 722487 (Kan. WCAB Aug. 9, 1999).

<sup>9</sup> See, e.g., *Solorio v. Wilson & Co.*, 161 Kan. 518, 521-22, 169 P.2d 822 (1946); *Sparks v. Wichita White Truck Trailer Center, Inc.*, 7 Kan. App. 2d 383, Syl. ¶ 1, 642 P.2d 574 (1982).

**CONCLUSION**

Claimant did provide respondent with timely written claim and is entitled to workers compensation benefits.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated February 3, 2009, is reversed. As stipulated by the parties, the claimant is entitled to an award for a functional impairment of 6.75 percent to her right lower extremity at the level of her leg and an award of 6.75 percent to her left lower extremity at the level of her leg.

**RIGHT LOWER EXTREMITY**

No temporary total was paid on this claim. Claimant is entitled to 13.50 weeks of permanent partial disability compensation, at the rate of \$213 per week, in the amount of \$2,875.50 for a 6.75 percent loss of use of the right leg, making a total award of \$2,875.50.

**LEFT LOWER EXTREMITY**

No temporary total was paid on this claim. Claimant is entitled to 13.50 weeks of permanent partial disability compensation, at the rate of \$213 per week, in the amount of \$2,875.50 for a 6.75 percent loss of use of the left leg, making a total award of \$2,875.50.

Claimant is entitled to all reasonable and related medical treatment paid by respondent, subject to the fee schedule, as well as unauthorized medical up to the statutory maximum, and future medical upon application to the Director.

The Board has reviewed the attorney fee contract between claimant and her attorney, finds the fee agreement is reasonable, and approves the same.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May, 2009.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John G. O'Connor, Attorney for Claimant  
Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge